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Human Rights Education and Monitoring Center

Evaluation Prepared by Human Rights Education and Monitoring Center (EMC) on Fulfillment of the Governmental Action Plan 2014-2015 in the field of Human Rights Protection

Topics: Criminal Justice; Independent, Accountable and Transparent Judiciary System; Prosecutor's Office; Activities of Law Enforcement Bodies; Freedom of Belief and Conscience and Protection of Religious Minority Rights

Human Rights Education and Monitoring Center (EMC)
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We hereby present evaluations prepared by Human Rights Education and Monitoring Center (EMC) on fulfillment of the 2014-2015 Action Plan in the area of Human Rights Protection. The present document addresses fulfillment of liabilities provided for in the following chapters of the Action Plan: ***Chapter I – Criminal Justice; Chapter II – Independent, Accountable and Transparent Judiciary System; Chapter III – Prosecutor's Office; Chapter IV – Activities of Law Enforcement Bodies; Chapter XII - Freedom of Belief and Conscience and Protection of Religious Minority Rights.*** In addition to assessing fulfillment of liabilities assumed under the Action Plan, document presents views on elaboration of the Action Plan and setting directions for the Action Plan of the coming years.

1. General Considerations on the Action Plan and the Report

The Governmental Action Plan on Protection of Human Rights and Task Forces, established within the Action Plan Coordinating Inter-Agency Council, represent an important platform for reviewing the main challenges in the area of human rights. Creation of this space substantially improved the opportunity for holding open and participatory discussions and prepared completely new discussion format for the series of issues, which did not exist before. Periodicity, as well as open and flexible format of these task forces need to be emphasized, which allow both the governmental and non-governmental groups to hold productive discussions.

It is important this process gets strengthened and improved with consideration of the experience accumulated during the past period.

That is why we present the Action Plan and several topics identified in the work of task forces during the first months on which we have to continue working:

Need for harmonization of effective strategies and action plans in the country – apart from the governmental Action Plan on human rights protection, there are many other independent documents on thematic strategy or action plan, the forums for reviewing of which would be different. It is important to clearly define what are the links between the governmental plan on human rights protection and the other independent plans and strategies and harmonize those. In the course of harmonization it is possible to select a vision, so that the fulfillment of an independent Action Plan or a strategy becomes an objective of the Action Plan on human rights protection. In any case, for creation of a full picture it would be advisable to provide reference (in the report on fulfillment of human rights protection action plan) to the relevant activities implemented within the framework of the other plan, which is by substance linked to activities provided in the plan.

Need for more Detailed Action Plan - part of objectives and activities provided for in the Action Plan is quite general, some of them create the possibility for making quite different interpretations, which affect the purpose of existence of the Action Plan and the process of its fulfillment. During the past period in some cases separate regressive initiatives and changes were explained as a fulfillment of activities provided for in the action plan. This is facilitated by presence of ineffective indicators in the plan.

Large part of indicators displayed in the Action Plan are difficult to measure and are not related to specific qualitative or quantitative indicators. It would be better to review the current wording of the Action Plan and where possible, in the part of activities and indicators, make reference to recommendations made by local and international experts/organizations with respect to Georgia or specific reports prepared by them or the other public and official documents that are available;

Need for Adjustment of Periods - timeframe for implementation of specific activities listed in the Action Plan is limited to two-year period or to one year. Such flexible and long-term system

significantly delays timely completion of activities provided for in the action plan. State authorities, based on the motive that they have two-year period for implementation of activities, are delaying the process unreasonably. It would have been better if shorter and more specific periods were allocated under the plan for separate activities instead of the two-year period;

Content of the Report on Action Plan Fulfillment – interim report on implementation of the Action Plan represents an important document, which analyses policy implemented by the state authorities during the certain period and taken steps. Therefore, it would be better if several issues are considered during the report preparation process, including: strengthening the analytical part of the report, in which, apart from factual data and narrative an analysis will be provided; apart from the considerations provided by the agencies, the opinions expressed by the other stakeholders need to be integrated in the report, which will create the possibility to show the complete picture.

2. Assessments on Fulfillment of the Separate Chapters of the Action Plan

Criminal Justice

Information on certain activities is missing or is incomplete in that part of the report, which pertains to criminal justice, and therefore requires specification. The report does not state anything on activities 1.4.1 and 1.4.2, which are related to the increasing the role of a judge. Steps taken in this direction by the state agencies in cooperation with the High Council of Justice deserve special interest.

The report also includes incomplete information on the activity 1.3.1, which concerns systemic reform of the Code of Administrative Offences. The report refers only to separate changes introduced to the Code regarding this topic. The government administration started working on fundamental revision of the Code. Within the reform framework, according to available information, it is planned to transfer criminal misdemeanors to the Criminal Code and abolish administrative imprisonment mechanism. The report should highlight the activities performed in this regard and the current situation. As regards the activity 1.1.3, the report does not say anything about reform of the Jury System the set timeframe for which was 2014. The report only mentions about retraining of prosecutors, which cannot be considered as the reform of the jury system.

As regards the other activities provided for in this chapter:

Activity 1.1.1 Competition Principle and Strengthening the Rights of Defense

According to the report, amendments were introduced in the legislation for the purpose of fulfilling this objective. Since the deadline for fulfilling this activity was the year 2014, it is implied that respective agencies at this stage consider the liabilities in this area as achievable. However, there are several issues related to competition and defense rights, which are essential in considering fulfillment of liabilities.

Such is, first of all, ***postponement of enactment of a new rule for interrogating witnesses.*** Last time it was postponed in December 2013. According to a joint opinion of the Council of Europe (EC) and Organization for Security and Cooperation in Europe (OSCE) on a Criminal Procedure Code of Georgia, which represents the most recent and comprehensive review of the Law, the existing interrogation model contradicts the competition principle protected by new Criminal Procedure Code. [1] From this stage of the process, it would be impossible to talk about fair and equal opportunities. Also, such superficial explanation of the wording on competition in the Action Plan and considering this liability as fulfilled are also not justified.

One more issue, which contradicts competition principle and defense rights appeared in June 2013 in the Criminal Procedure Code of Georgia. According to changes of this period, on the basis of the motion of defense, the right to perform ***initial examination of the retrieved item*** was given to the prosecution. Such set of the issue contradicts the principle of equalities of the parties. [2] Such regulation in the Code also questions fulfillment of the Activity 1.1.1 of the Action Plan.

Activity 1.1.5 Drafting Legislative Initiative required for Implementing European Standards to Protect Right for Private Life in the Area of Criminal Justice

With respect to this Chapter the report mentions about integration of secret investigation activities chapter in the Criminal Procedure Code, which is unilaterally the positive step. However, the report also mentions involvement of the Personal Data Protection Inspector as an external controlling party in the secret investigation activities. The context in which the report refers to this issue is not clear, since involvement of the Personal Data Protection Inspector in these processes represented subject of criticism by experts. However, there is no reference to such criticism in the report. The report also does not state the issue of direct access retained for the Ministry of Internal Affairs, which allows the Ministry to perform secret surveillance and bugging without due control. Finally, such regulation of secret bugging significantly reduces the standard approved by the Parliament in August on conducting secret investigative activities. [3]

Independent, Accountable and Transparent System of Justice

Similar to the first chapter, the information, presented in the report with respect to Chapter on Court, is incomplete. In particular, the report does not address at all the status of fulfilling the Activities 2.1.2 and 2.3.1, which pertain to social protection guarantees for judges and publicity of judicial acts.

As regards the other measures, provided for in the action plan, information presented in the report with respect to them is general. It is known that several draft laws were prepared by the Ministry of Justice last year. The Venice Commission provided its own consideration on the draft law in October 2014, based on which, authors of the next draft law modified the previous one. However, getting

[1] Paragraph 58 of the Joint Assessment of the Council of Europe (EC) and Organization for Security and Cooperation in Europe (OSCE)
[2] Paragraph 35 of the Joint Assessment of the Council of Europe (EC) and Organization for Security and Cooperation in Europe (OSCE)
[3] http://transparency.ge/post/general-announcement/es-shen-gexeba-beselia-popkhadze-sesiashvilis-proektiukan-gadadgmuli-nabijia

familiar with the draft prepared on the basis of comments of the Venice Commission was impossible for a long time, since the Ministry of Justice did not publish revised acts.

Later the content of the acts was publicized. Draft laws pertain to important issues, the implementation of which has been supported for a long time. The procedure for selection of students for the High School of Justice, the stage of reviewing candidates for the positions of judges in the High Council of Justice, procedure for electing court chairmen, the issues relating to business trips of Judges and allocation of cases were improved in the Law. Draft also provides for elaboration of disciplinary responsibility of judges. Reform of these issues was considered in accordance with respective items of the action plan. Although the fulfillment deadline for the majority of activities was 2014, it is important that the draft law is prepared and ready for sending to the Parliament.

However, apart from the unilaterally positive initiatives, some issues addressed in the draft law still remain problematic and do not facilitate adequate fulfillment of activities provided for in the action plan, these are:

- Procedure for pre-term termination of the term of office for the Court Chairman, which would endanger interests of judicial independence;
- Provision on re-appointing the employees of the court administration, which may entail unreasoned and biased decisions;
- Insufficient reform of case allocation. Adoption of the electronic case distribution procedure, will not change substantially the problem of subjectivism in the case allocation process;
- Regardless the change in disciplinary process, the grounds for disciplinary offense remain the same, their content and volume are not specified. Therefore, the reason still remains vague for which the judge may be imposed a disciplinary liability.
- Draft law does not say anything about criminal responsibility of judges, which is also an important challenge from the independence perspective of judges.

Apart from the stated deficiencies, one of the fundamental problems is appointing judges for 3-year trial period. Although the ***Venice Commission issued a recommendation on abolishing the possibility to appoint judges for trial period both in the constitution and in the organic law*** [4] it is known that the Ministry of Justice is not going to share this proposal.[5] It is important that the assessments of the Venice Commission become the grounds for elaboration of prepared draft laws but also for further renewal of the Action Plan. The current provision in the Action Plan regarding appointment of judges for the period of 3 years contradicts opinions of international and local organizations on appointing judges in the position and does not contribute to elimination of systemic problems representing threat for independence of judges. It is important that based on the last recommendation of the Commission, Action Plan is modified and the provision on regulation of appointing judges for 3-year trial period is removed therefrom.

Prosecutor's Office

[4] Paragraph 32 of the joint opinion of the Venice Commission and Council of Europe Directorate General on Human Rights and Rule of Law (DGI) (DHR) on Draft Law on Amendments to the Organic Law on Common Courts

[5] http://justice.gov.ge/News/Detail?newsId=4680

Information presented in the report regarding the Chapter on Prosecutor's Office pertains to issues related with retraining of prosecutors. The report does not state anything on fulfillment of activities provided for in paragraphs 3.2.1, 3.4.2, 3.4.3, 3.5.1, 3.6.1 and 3.7.1, which represent the most important parts (including modification of the structure of the prosecutor's office, issues of restorative justice, activation of local public councils and etc).

As regards the activities provided for in the other paragraphs:

Activity 3.1.1 Coordination of Criminal Law Policy through Cooperation with the other Law Enforcement Bodies

The report states that respective units of the prosecutor's office analyzed the widespread crimes, how they were committed, reasons and motives based on which the criminal law policy was developed.

However, as the activity presented in the Action Plan implies coordination among law enforcement bodies, which clearly does not concern only prosecutor's office, it would be important to analyze in the report how criminal law policy was coordinated by the prosecutor's office during the past period with the police on such important issues as violence against women and women murders, religious intolerance and religious conflicts and etc. Unfortunately the view of prosecution regarding tough and important challenges including towards the other law enforcement bodies was not presented.

Activity 3.3.1 Professional Development

This paragraph does not address how the prosecution gets prepared and what steps it takes for prompt and effective launch of the new procedure for witness interrogation. In addition, information is not presented what is the vision of the Prosecutor's Office on increasing effectiveness of investigation and persecution of hate motivated crimes.

During the presentation of the report in the Parliament of Georgia on meeting the Ombudsman's recommendations, a representative of the Prosecutor's Office indicated that women murders and cases of violence against women, that took place during the previous months, were not gender-motivated. However, the speech of the Prosecutor's Office representative did not make it clear what were the standards and methodology used by the Prosecutor's Office as a guidance in qualification of hate motivated crimes (including those gender-motivated). It is significant that the items of Action Plan are explained by the respective institutions, including the Prosecutor's Office, in this way. Prosecutor's Office has to strengthen its work in the direction of planning and implementing policy for fighting hate-motivated crimes.

Activity 3.7.1 Active Use of Discrete Authority

Use of this activity is related to implementation of restorative justice and liberal criminal policy. Unfortunately the report does not present an analysis how the policy of the Prosecutor's Office was changed or developed and how the prosecution system viewed the perspective of policy liberalization. There are certain questions regarding non-transparent and inconsistent use of

prosecutor's powers. One of the examples of this are decisions of the prosecutor's office with respect to drug-related crimes and inconsistent practice of using plea bargain in these cases.

Other Issues

The reform of the Prosecutor's Office is in progress, which is being implemented within the framework of the reforming of criminal law system under the Inter-Agency Coordination Council. Since the current version of the Action Plan does not address systemic reform of the Prosecutor's Office, it would be better to introduce change in the plan and detail those activities and indicators, which should be available in the course of the reform and after its completion.

Activities of Law Enforcement Bodies

Chapter on activities of law enforcement bodies is more focused on improvement of infrastructure and elaboration of technical resources, which represent incorrect directions of development for the law enforcement system and require change in the text of the action plan. It is important to make reference in the Action Plan to fundamental changes within the system, its transformation and rehabilitation, which would affect the working style and methods. Also it is necessary to focus on improving the forms of cooperation between the Police and citizens, changes in content of the Police mechanisms and principles, improving the Law on Police and the other regulatory acts and strengthening reporting forms for the Police activities.

The process of reforming the law enforcement system, which is in progress, requires timely and accurate changes in the Action Plan (where those essential transformations will be addressed which are to be carried our within the reform framework). This transformation clearly should not be related to technical separation of Security Service from the Ministry of Interior and target at much bigger changes.

As regards the Plan fulfillment:

Activity 4.1.1 Increasing Investigative Capacity of the Police

The report addresses retraining courses for the purpose of increasing investigative capacity. Unfortunately the report does not give the other detailed information. In addition, the process and outcomes of retraining investigators with respect to entry into force of a new procedure for witness interrogation is not reviewed. General indication at retraining courses is not sufficient to evaluate fulfillment of the liabilities assumed by the Ministry of Internal Affairs under the action plan, especially as the most important changes were postponed based on the Ministry's initiative and the motive that investigators were not trained.

Activity 4.2.2. Reform of the Current Internal Control Mechanism with respect to Activities of Employees of the Ministry of Internal Affairs

This Activity is one of the most important in the chapter on law enforcement bodies. However, the report does not state anything about fulfillment of this measure. Changes were not implemented in the internal control system. Activities of the General Inspection are still non-transparent, its institutional model does not ensure independent and impartial review of the case and also does not increase public confidence towards the system. Regulation on the General Inspection was publicized only at the end of January, after repeated requests.

During the previous months unjustified practice of breaching the investigative subordination was retained as an accepted practice, when the Ministry of Internal Affairs was conducting investigation of the crime potentially committed by a policeman. [6] It is clear that the liabilities provided for in the plan were not fulfilled in this direction.

Activity 4.2.5. Ensuring Transparency of the Police Activities

In the course of preparing and approving the plan, regulations of seven departments of the Ministry of Internal Affairs was secret. At the meetings of the working group it was clear that the Ministry representatives were explaining the transparency obligation superficially and distribution of information leaflets was considered by them as fulfillment of the liability. The similar interpretations indicate that the activities are to be defined in a clear, specific and unambiguous manner, so that the possibility of superficial explanations is excluded.

With respect to transparency issue it should be noted that the Ministry of Internal Affairs started publicizing regulations of separate departments, which was a positive step. However, the Ministry did not provide any argument what was the motive for keeping regulatory legislation secret for years. Also, it needs to be noted that the regulations of several departments are still kept confidential. It would be advisable to make unilateral obligations regarding their publication in the Plan.

Freedom of Belief and Conscience and Protection of Religious Minority Rights

Obligations provided in the Action Plan (2014-2015) with respect to protection of religious freedom do not address severe social needs in this regard, namely, effective discrimination legislation, non-secular financing practice, hard situation in public schools and instruments for improving the trends of violating religious neutrality in the public service. Major part of the activities provided for in the Action Plan fall under liabilities of the State Agency for Religious Issues. However, given the legitimacy problem of this institution and its disputable mandate, the efficiency of fulfillment of its liabilities becomes completely doubtful.

Human Rights Education and Monitoring Center (EMC) presents below the interim report on fulfillment of the Action Plan under the Chapter 12 (***Freedom of Belief and Conscience and Protection of Religious Minority Rights***). EMC presents general recommendations for their consideration in the future action plan.

[6] http://emc.org.ge/2014/12/03/peticia-parlaments/

1. Problem of effectiveness of mechanisms, provided in the Law, on elimination of all forms of discrimination

12.1.1. Ensuring Equal Rights for Representatives of Religious Minorities and Initiation of the Comprehensive Law on Elimination of All forms of Discrimination

Adoption of the Law on Elimination of all Forms of Discrimination should be regarded as a step made forward towards enactment of the equality policy. It is noteworthy that despite serious resistance from the dominant religious institution and separate social and political groups against adoption of the law, the Parliament of Georgia adopted it. However, social and political context of discussions around the law affected the content and significantly weakened mechanisms provided for in the original version of the draft law. Presumably in the course of opposition between the state and the Church, appeared Paragraph 2, Article 5, which sets the scope for interpretation of the law and indicates that none of the law provisions is to be interpreted in a way that it contradicts the Georgian Constitution and the Constitutional Agreement between the Georgian state and the Georgian Apostolic Autocephalous Orthodox Church. Given the principles provided for in the Article 9(2) of the Georgian Constitution, which requires that the constitutional agreement shall be in full compliance with the internationally recognized principles and norms, in particular in the field of human rights and freedoms, the presence of such provision is not clear. The Constitution applies the primacy of standard of human rights protection to the Constitutional Agreement, therefore the potential conflict of equality, as a fundamental constitutional principle, with the Constitutional Agreement is resolved in favor of the equality under the Constitution. In such conditions, the reviewed provision is more political text rather than the norm establishing the legal rule.

Mechanisms provided for in the *Law on Elimination of All forms of Discrimination* do not meet request for effective legal protection and do not contain sufficient institutional and procedural guarantees on effective restitution of violated rights (restitutio ntegrum) and prevention of such violation. Clearly efficiency of anti-discriminatory mechanisms in the law implementation will be accurately measured, though at this stage it is possible to identify significant and clear problems in the Law, in particular:

- Pursuant to the Law, the Ombudsman can make only recommendatory decisions on discrimination cases committed by private individuals. Non-fulfillment of its recommendation on facts of discriminatory treatment by administrative bodies shall be appealed according to administrative procedure in the court. In the first case, non-fulfillment of the Ombudsman's recommendations by individuals does not entail any action, which makes it impossible to eliminate discrimination against victim and poses questions overall about efficiency of mechanisms. Continuation of dispute against administrative body in the court is related to spending administrative resources and time and provides for receipt of outcome only after use of two independent mechanisms;
- The Ombudsman does not have the power to request mandatory submission of information and case materials from private persons. Non-submission of evidence complicates case review and decision-making;
- Timeframe provided for in the Law makes it impossible to use the Ombudsman and common courts mechanisms in parallel and complimentary manner. Because of 3-month time

limitation for application to the court, potential victims of discrimination are not given the opportunity to apply initially to specialized department of the Ombudsman's office and continue dispute in common courts on already prepared case.

- In conditions where the Law does not provide for minimum threshold for moral damages, and according to the established judicial practice, when the amount of moral damages is quite low, potential victims of discrimination are not given the guarantees for effective restitution of their rights (restitutio integrum).

- Apart from efficiency of mechanisms, the problem is that the state agencies did not implement effective general anti-discriminatory policy within the institutions.

2. Problems related with Construction of Buildings of Religious-Cult Significance

12.1.2. Study of the best international practice on legal norms regulating construction of religious-cult premises and development of respective recommendations.

The effective legislation with respect to construction is religiously neutral/secular and does not provide for special regulation for construction of religious-cult premises. Religious minorities in the course of constructing building for religious service come across with serious problems due to resistance from local dominant religious group and high tolerance of local government towards it as well as due to negligence of the religious neutrality principle. Therefore, in conditions when there is a problem in law application, in fact it is not clear why the government started to regulate the issue at normative level and impose special regulations. Analysis of statements made by high-level officials and the Chair of the State Agency for Religious Issues shows that the purpose of such attempts was presumably imposing certain limits and it contains the risks of raising arguments regarding expediency of construction of cult building (interests of majority, historical perception of the place and etc.)

For the purpose of implementing the powers provided for in Article 2(i) of the Government's Resolution # 177 (February 19, 2014) on establishing the State Agency for Religious Issues and Approving its regulation, the Agency requested from the municipalities to provide it with automatic information on all applications required for issuance of recommendations for construction. In such conditions informal practice of constructing cult buildings was established, which includes the threats of arbitrariness and politicizing the issue. In this process it is not clear based on which criteria can the Agency issue respective recommendations and what normative boundaries are limiting it. Simultaneously, engaging the Agency in administrative proceedings creates the problem of breaching timeframe set under the law, which showed up in the case of Jehovah's witnesses in Terjola, where the Municipality indicated non-receipt of the recommendation from the Agency as the reason for not making prompt decision on prolongation of the construction permit in the course of reviewing case in the court.

It should be noted that the response of the State Agency for Religious Issues with respect to any of the problems (including the one related to boarding school of Muslim pupils in Kobuleti) detected with respect to construction/opening buildings of religious designation was not effective. Even in

aggravated cases of religious violence, the Agency does not recognize the fact of limiting the right of minority groups (e.g. Kobuleti case, Terjola case) and presence of the motive of religious hatred, which indicates at unfairness and inefficiency of its policy.

Document on fulfillment of the human rights Action Plan states that the State Agency for Religious Issues already studies legislative regulations of 10 countries on the matters of constructing religious-cult buildings, though it is not clear what type of approach and policy will be undertaken by the Government on construction matters and respectively what criteria will be used by the Agency for selection of respective countries and learning their experience. The report does not specify experience of which countries was studied and why they got selected.

3. The issue of preventing the crime motivated by religious hatred and the problem of effective investigation

12.2. Prevention and Effective Investigation of Crimes motivated by Religious Hatred/Intolerance

During the last 2 years the trend of dramatic increase in religious violence was noticed, which was determined mainly by the government's ineffective policy.

During the last two years many cases of religious intolerance and violence against Muslim community were detected in Adjara, which was followed by serious violation of rights of the Muslim population, in particular:

- During 2012-2013 the facts of religious aggression were revealed in villages of Nigvziani, Tsintskaro and Samtatskaro. After a violence by orthodox community in the village of Samtatskaro, supported by local self-government (violation of religious neutrality principle) Adjarian Muslims failed to open mosque (Jame) and are pursuing religious practice in private houses. [7]
- On August 26, 2013, in the course of disassembling the mosque in Chella Village and Police operation, the facts of unauthorized detention of Muslims by officers of the Ministry of Internal Affairs and use of disproportional police force were noticed.[8]
- On September 10, 2014, local population of Kobuleti impeded opening of boarding school for Muslim pupils, which was not prevented by the Police. The boarding school pupils still have to live and study in an old, over-crowded building.[9]
- In the Village of Mokhe decision made by local self-government through non-democratic procedures on opening a cultural center in a disputable religious building and enforcement of such decision with excessive police forces resulted in unlawful detention of Muslim community members by officers of the Ministry of Internal Affairs and use of disproportional force. [10]

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[7] see. Human Rights Education and Monitoring Center (EMC)(EMC) survey: სეკულარიზმის კრიზისი და ლოიალობა დომინანტი ჯგუფის მიმართ, 2013, ხელმისაწვდომია: http://emc.org.ge/2013/12/05/25/

[8] http://gdi.ge/ge/news/rights-of-muslim-population-grossly-violated.page

[9] http://emc.org.ge/2014/09/24/gancxadeba-kobuletshi-muslimta-uflebebis-shezgudvaze/

[10] http://emc.org.ge/2014/10/23/gancxadeba-moxes-incidenttan-dakavshirebit/

Analysis of offences motivated by religious hatred against Jehovah's witnesses indicates at increasing religious intolerance and inefficient policy of the government. According to Christian organization of Jehova's witnesses, in 2013, 53 cases of violence against its community members were revealed, while this number reached 64 in 2014. Comparative analysis of the current practice with the previous years shows that that the scale of violence increased and it acquired more collective and public character. Clearly such practice is related with the problem of non-punishment and requires respective analysis by law enforcement bodies.

Analysis of the above facts of religious violence shows that, as a rule, it has social character and is determined by intolerance coming from the local dominant religious group. The government inadequately responds to expressions of religious extremism and does not ensure prevention of violence coming from the private persons and effective investigation. It should be noted that the law enforcement bodies did not conduct effective investigation on any of the aforementioned cases and did not punish specific offenders.

Surely the failure to protect religious freedom imposes legal responsibility on the state provided for, inter alia, in Articles 3, 9, 11, 14 of the European Convention due to non-fulfillment of positive liabilities.

Along with the ineffective policy to fight against religious intolerance and violence, the policy of the Ministry of Internal Affairs is demonstratively repressive towards religious minorities. In the course of operation planned in villages of Chela and Mokhe, the Police unlawfully detained some members of the Muslim community and used disproportional force against them. Such behavior of the Police bears signs of tolerance policy towards the religious violence. Analysis of the current practice demonstrates that the state always refrains from using legal and repressive mechanisms in cases when representatives of the dominant religious group exercise religious violence or persecution, however repressive methods are used against religious minorities.

The Prosecutor's Office did not commence investigation on facts of using excessive force against Muslims by the Police despite repeated applications, and the General Inspection did not identify even the signs of disciplinary offence in the Policemen's behavior. Based on EMC application, regarding the Mokhe case, investigation started in the respective unit of the Prosecutor's Office of Samtskhe-Javakheti on December 6, 2014 on the fact of potential exceeding the authority by the Police during detaining local Muslims in the Village of Mokhe on October 22, 2014 (crime provided for in Article 333 of the Criminal Code of Georgia – criminal case N013021214003). So far the Prosecutor's Office did not grant the status of victims to people with the most severe injuries, which deprived them of the right to take part in the investigation process effectively and exercise control.

12.2.3. Retrain respective employees of the Ministry of Internal Affairs and the Prosecutor's Office for the purpose of raising qualification in investigating the crimes committed on discrimination grounds

Action Plan fulfillment document does not include information specifically about the subject (syllabus) and intensity of training delivered to respective persons of the Ministry of Internal Affairs

and the Prosecutor's Office for raising their qualification in investigation of offences committed on discrimination grounds and what is the methodology used by the Ministry/Prosecutor's Office for measurement of the efficiency of the training courses. Clearly in such conditions it is impossible to assess the scale and efficiency of the implemented measures.

Generally it needs to be noted that prevention and investigation of offences motivated by hatred require special attitude and knowledge from law enforcement bodies, which is linked to the preparation of respective manual and strategy and plan based on a special approach. Moreover, some offences committed on the basis of discriminatory motive (e.g. crimes committed on homophobic and transphobic motives) require complex knowledge, special attention and sensitivity from the investigative bodies. Interim report on Action Plan fulfillment does not show that the respective bodies ensured accumulation, systemization and measurement of knowledge and sensitivity required for effective fighting against hate-motivated crimes. Document shows that respective law enforcement bodies' employees are delivered only ordinary and general types of trainings on discrimination issues.

4. The Problem of Observing Religious Neutrality in Public Service

12.3.1 Increasing awareness of public officials of the issues of religious neutrality and secularism

So far the standards on observance of the secularism/religious neutrality in public service is not regulated with respective normative base and relevant normative acts do not provide adequate guarantees for observance of religious neutrality in local self-governance bodies. Moreover, the effective legislation does not regulate the issues of using hatred language in Public Service.

Therefore, it is important that at the initial stage the government imposes similar regulations and afterwards ensures their implementation in practice.

Respectively, in such conditions it is not clear which standard/test of secularism and what type of a guide (up to 160) is used by the Agency in the course of delivering trainings for public officials. The Action Plan does not provide information neither about respective topics nor about persons/experts who deliver the training course.

5. Non-compliance of religious organizations' funding practice with the principles of equality and secularism

12.4. Reimbursement of damages inflicted to religious organizations and review of its partial reimbursement by the State Agency for Religious Issues

12.4.1. Determination of damages inflicted to religious organizations and review of its partial reimbursement by the State Agency for Religious Issues

For the purpose of reimbursing the damages, in 2014 the amount transferred to the Muslim community of Georgia equaled GEL 1,100, 000, to Jewish Community – GEL 150,000,

Roman Catholic Community GEL 200,000, and Armenian Christian Community GEL 300,000. Overall, the total amount constituted GEL 1,750,000. According to the State Agency for Religious Issues, when dividing the amount to be allocated to religious communities, such objective data were considered as: the number of congregation and religious advisors, as well as the number of religious-cult buildings and their current condition, current needs and etc.

Standard agreements signed with religious organizations detail the purpose of disbursed funds. Only agreement concluded with the Muslim community does it specify that 75% of the amount would be spent on wages of the religious advisers and on the religious service, while the remaining amount would to be spent for the other purposes.

The annual amount allocated for religious organizations is divided and transfers in installments are made to respective groups, the exact date and amount of which are defined by the Agency. In order to receive the amount, all religious groups shall submit respective expenditure program to the Agency, corresponding to the goals provided for in the Agreement, which is to include expenditure details. In addition, religious organizations are obliged to submit interim and final reports on expenditure program upon request by the Agency. The Agency is also authorized to conduct audit of presented reports. In case of spending funds with violation of the agreement terms, the Agreement will provide for termination of the agreement for the current year.

The existing funding practice goes beyond the compensation/reimbursement model of damages inflicted to religious groups and, in fact, represents their direct budget funding. Resolution of January 27, 2014, does not provide for prudent, fair and objectively measurable criteria that the government would rely on in the course of ascertaining the compensation amount. In conditions of absence of criteria provided for in the Law, in practice, evaluation of the criteria used by the Agency in calculation of inflicted damages also proves that it is not related in any form with the volume and result of damages inflicted in the past to the addressee religious organizations.

In this regard the funding practice for 4 religious groups is similar to the one used for the Georgian Apostolic Autocephalous Orthodox Church. Pursuant to Article 11 of the Constitutional Agreement, signed between the Georgian State and the Georgian Orthodox Church, despite the declared liability for the damages inflicted by the state to the Church, the liability assumed under the Paragraph 2 of the same Article, providing for investigation of compensation forms, amount, timeframe, property or land transfer issues by the Parity Commission, was not fulfilled by the state. Respectively, the funds paid under the direct transfer from the budget to the Georgian Apostolic Autocephalous Orthodox Church annually are disbursed not according to the Article 11 of the Constitutional Agreement but on the basis of the state's political will. This process does not rely on objective, measurable criteria and respective lawful grounds related in any form with compensation of inflicted damages.

In a compensation model, beneficiaries have the opportunity to manage the received compensation freely, since the compensation of damages is component of the property right and disbursement of funds on its basis is justified by a legitimate interest to restitute breached rights status. In the reviewed cases, when in fact direct budgetary funding of religious groups is obvious, use of funds

transferred to beneficiaries for confession purposes contradicts with the principle of secularism (more precisely, with prohibition of establishing the church by the state). This principle bans transfer of budgetary funds to religious groups for laic, religious purposes and requires maximum prevention of deepening the inter-dependence between the state and the church. Agreements signed with the four religious groups unilaterally show that the funds are disbursed by the state for confession activities. Analysis of funds disbursed from the budget for the Orthodox Church also proves that they are used for confession purposes. Certainly, current funding practice creates the problem for separation of the state and the religious organizations and violates principles of equality and religious neutrality.

Such funding practice gives the state an opportunity to exercise control over religious organizations and obtain their loyalty. Funding practice for four organizations shows that the State Agency for Religious Issues defines completely the amount to be transferred to them and the period. In the event of violation of agreement terms, the state retains the right to cease state funding. This contradicts the principle of compensating damages.

In this regard it is remarkable that decision on funding four religious organizations, despite its special importance, was made by the Government under a secondary legislation despite its importance and did not entrust the regulation of this matter to the legislative body. Respectively, funds are disbursed from the reserve fund and not from the state budget.

The suspicion regarding the interest in controlling religious organizations is strengthened by the circumstance that the state directed large portion of funding to Muslim religious organizations, while the other confessions were also severely facing the problem of damages inflicted due to non-return/restitution of cult buildings and their maintenance-rehabilitation. In recent years, the government had the serious problems with respect to protection of human rights in this community and it may have the interest to control it. It is remarkable that 75% of funds disbursed to Muslim community is spent on the Department of All Muslims of Georgia and remuneration of religious advisers of the Georgian Muslim Association, which in fact is a direct form of subordinating and controlling these people. There are reasoned questions regarding direct participation of the state in establishing the Department of Muslims of All Georgia. The suspicion regarding legitimacy of the Department is strengthened by the organization structure, which is non-democratic and does not know any mechanism of obtaining legitimacy from the Muslim community. In the course of reviewing critically significant problem (the issue of constructing new mosque in Batumi, events developed in village of Mokhe), difference between interests of the Muslim community and official position of the Department was clearly demonstrated.

Therefore, the current funding model for four religious organizations provides for alarmingly intense control of finances transferred to religious groups, which bears high risks of interfering with their independence and autonomy. In a situation where the government formally relates the funding of four religious organizations with the damages inflicted during the Soviet period, interference in freedom of beneficiaries, as owners, and imposing control over spending are especially unclear. Conditions of signed agreements show that in defining purpose of allocated funds, as well as in accounting-financial and policy setting activities, the state actively is engaged, which is unacceptable form of dealing with religious organizations. Clearly the funds allocated from the state budget should

meet the public requirement for transparency. And this goal is to be achieved through setting objective and fair criteria for damage reimbursement /compensation in accordance with the public legitimate interest and not by setting and controlling priorities in daily activities of religious groups within the funding framework.

It should be noted that in the course of funding the Georgian Apostolic Autocephalous Orthodox Church, which is in fact under the model of direct budget funding, the state does not provide for any mechanism for controlling accountability and expenditure. Respectively, it is not clear why the state uses different approach towards entities in the similar relations and why it has a different attitude towards the dominant church.

6. The Problem of absence of Restitution Policy

12.4.3. Investigation of the issue of defining the historical belonging of premises of religious importance

Although the property confiscated from the Georgian Orthodox Church during the soviet period was completely restituted, such policy has not been undertaken so far for the other religious organizations,[11] which creates a serious problem in exercising religious freedom.[12] Expression of restitution problem was the conflict in village Mokhe as well. Muslim community was requesting return of the cult building since 2007. Restitution problem is especially severe with Armenian Apostolic Church and Catholic Church[13], since in some cases their historical churches are occupied by the Orthodox Church causing serious historical and legal disputes.

In this regard the composition of the commission reviewing[14] the issue of disputable cult building in village Mokhe, mandate and the ways for resolution of restitution-related issues by the state through democratic procedures and not within the judicial system are especially problematic..

As regards the commission studying circumstances related to the building registered under the club status, located in village Mokhe (Adigeni Municipality) the report of the Agency stateв that the main goal of the commission activities was discharging the opposition between the Orthodox and Muslim population originated on October 22 and settlement of problems (the corn stone of which was the resolution of the historical – confession belonging of the disputable premises, which should be achieved by the commission within the scope of its activities). The Agency report states that *"finally the dispute review process, conditionally can be assessed as a conferring group established on the basis of the mutual agreement of the parties, where respective experts are selected/invited based on consensus".*[15]

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[11]"საქართველო გარდამავალ პერიოდში ანგარიში ადამიანის უფლებათა სფეროში: განვლილი პერიოდი, გადადგმული ნაბიჯები და არსებული გამოწვევები, თომას ჰამარბერგი, 2013 წლის სექტემბერი",გვ.49 ; GEORGIA
2013 INTERNATIONAL RELIGIOUS FREEDOM REPORT გვ. 3

[12] "ტოლერანტობისა და მრავალფეროვნების ინსტიტუტის (TDI) კვლევა - რელიგიურ გაერთიანებათა საჭიროებების კველვა საქართველოში", available at : http://bit.ly/1CKPxfu

[13] https://www.youtube.com/watch?v=EN8dgOMs8Zc ; GEORGIA

[14] http://religion.geo.gov.ge/geo/news/sofel-moxes-sadavo-nagebobis-sakitxis-ganmxilveli

[15] Report of the State Agency for Religious Issues, June-December 2014 , P.38.

Clearly the resolution of confession issues regarding cult building through democratic means and consensus contains the risks of politicizing the process. In this regard inclusion of Patriarchate representatives in the commission was not clear in conditions where the Orthodox Church never expressed claims on disputable building and the state did not study reasonability of its new claim.

According to the Agency, the established commission is not an administrative body and it is not obliged to publicize information about its meetings and case materials under the General Administrative Code. In such conditions, so far it is not known which issues are reviewed by the Commission and what types of activities are performed by the Commission member administrative bodies.

Response of the government with respect to events occurred regarding disputable building in Mokhe is a supra-legal, unfair and ineffective precedent of resolving restitution related disputes, which further strengthens criticism against the Commission activities.

3. Proposals for further Elaboration of the Action Plan

Structure and Format of an Action Plan:

- Need for harmonizing effective strategies and action plans;
- Need for more detailed action plans;
- Need for specification of the timeframe in the action plan.

The following activities are to be included in the Chapter on Criminal Justice:

- Timely launch of new procedure for witness interrogation;
- Effectuate full judgment of Jury;
- Change the procedure for search and recovery based on defense motion (transfer the right of primary examination to defense).
- Additional reform of secret surveillance and bugging procedure (keeping the Personal Data Protection Inspector as a controlling body; possibility to cancel direct access of the Ministry of Internal Affairs);
- Consider OSCE and EC recommendations with respect to Criminal Procedure Code.

The following shall be added to the Chapter on independent, accountable and transparent judicial system:

- Remove the possibility of appointing judges for 3-year trial period;
- Elaborate initial selection procedure of judges;
- Consider recommendations of Venice Commission of 2014 regarding the Law on Common Courts and Law on Disciplinary Proceedings;
- Fundamental reform of case allocation including removal of the possibility to distribute cases unilaterally and eliminate the practice of reallocation in task groups;
- Enhance training of judges in human rights, rights of vulnerable groups and facilitate establishing the human rights based judicial system.

Chapter on Prosecutor's Office shall define:

- Directions of systemic reforms of the Prosecutor's Office;
- Change the procedure for selection and appointment of the General Prosecutor, to ensure selection of the candidate by professional sign and ensure making reasoned decision. Transfer the right to make decision on appointing the General Prosecutor to the Parliament.
- Introduce the principle of discharging General Prosecutor through impeachment procedure;
- Decentralize Prosecution system and strengthen individual prosecutors, including through introduction of written instructions;
- Reform of systems for Prosecutor's selection, appointment, promotion and evaluation to create fair, transparent and evidence-based system;
- Reform of disciplinary liability area to ensure its independence and impartiality;
- Reform of liability system including development of independent investigation mechanisms;
- Build capacity of Prosecutors for the purpose of increasing the quality of substantiating the motions;
- Strengthen capacity for investigation of hate motivated crimes and persecution by means of developing, implementing special policy and training prosecutors.

The Chapter on activities of law enforcement bodies shall refer to the following topics:

- Directions for fundamental reforms of justice system;
- Distance security system from the Ministry of Internal Affairs and form it as a separate institution. Also create real guarantees for their independence.
- Elaborate legislation regarding security service and strengthen forms of supervision over security service agencies;
- Create institutional mechanisms for depoliticizing law enforcement system including distancing the Police from the Ministry's Central Office;
- Limit and regulate information exchange practice obtained for the preventive and investigation purposes.
- Review the Law on preventive functions and the Police and bring it into compliance to the procedure legislation;
- Increase transparency of law enforcement system to ensure access to regulatory acts and public information.
- Build capacity of the Police and investigative bodies in fighting crimes motivated by hate;
- Strengthen the principle of observance of political and religious neutrality of the Police.
- Reform of General Inspection and create an independent investigative mechanisms.

Chapter on Freedom of Belief and Conscience and Protection of Religious Minority Rights is to address:

- Consideration of effective anti-discriminatory mechanism including assigning penalizing power to the Ombudsman for discrimination cases and improve procedural and instrumental defects;
- Review by the Government of the need of the State Agency for Religious Issues and its competences in the existing mandate, which are vague and unclear and include the risk of overlapping powers with the other administrative bodies.[16]

[16] Note: decision of the Government on establishing the State Agency for Religious Issues was not based on any recommendation of any organization/institution working on protection of human rights, or desire of the religious organizations themselves. Existence of similar state

- Deconcentrate the power to make decisions on religious freedom issues from the State Agency for Religious Issues and minimize the risks of politicizing in their resolution process;
- Revise the effective anti-discriminatory legislation for the purpose of protecting religious freedom (including tax code, law on state property, law on higher education) and bring it into conformity with the equality principle;
- Define the restitution policy for the property confiscated in the Soviet period and return the confiscated cult buildings to historical owners in a prompt manner;
- Revise the current discriminating and non-secular funding by the Parliament and the Government for the Georgian Orthodox Church as well as for the other 4 religious organizations under the Resolution of January 27, 2014;
- Set a clear standard of religious neutrality by the Government in the public service and prohibit the hate speech and ensure effective monitoring of its protection;
- Government is to ensure training cycle for representatives of local government on the issues of secularism, discrimination elimination and tolerance by independent experts having respective experience and values;
- Create guarantees for prevention of state interference in the autonomy of the religious organizations;
- Prompt resolution of serious cases (interfering with activities of the boarding school for Muslim pupils in Kobuleti, eliminate obstacles for construction of cult building for Jehovah's witnesses) of limiting religious freedom by the relevant state agencies in favor of human rights protection and equality.
- Define by the Ministry of Education the strategy for fighting indoctrination, proselytism, discriminatory practice in public schools and implement effective measures, which implies proactive and effective independent monitoring of the current situation in public schools;
- Ensure effective and independent investigation by the Ministry of Internal Affairs and the Prosecutor's office of crimes motivated by religious hate and ensure independent

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Agency, as a rule, is characterizing the soviet time political systems and is used by the state to control religious organizations. The analysis of the Agency's activities performed so far as well as of the strategy document on the state religious policy support this assertion. So far the activities of the Agency have been directed to developing forms for allocation and control of funds allocated for the four religious denominations and transferring financial and material benefits to various religious organizations, through a specially established commission, which clearly produce the risks of obtaining the control by the state over religious organizations.

Draft of the state strategy document on religious policy developed by the Agency directly indicates that the state should strengthen its efforts on security issues with respect to religions, instead of human rights as it used to be. In this regard persons living in border regions of Georgia are considered as a risk for the country's security. Realizing challenges by the state with respect to the religious freedom is inadequate and it aims at substantial deterioration of the current legal framework in the light of protection of religious freedom. For example, in the aforementioned strategy document, the Agency provides hierarchy of the religious organizations. For this purpose, it initiates the idea on adopting the Law on religion, which should define the current procedure for registration of religious organizations again and set different rights and duties for different religious organizations. In addition, the agency speaks about introduction of inter-religious studies in schools and setting special regulations for construction of religious-cult buildings.

It should be noted that the Agency did not respond to any of the facts of religious violence (Terjola, Kobuleti, Mokhe) effectively and its actions were not followed by any result in the light of resolution of problems faced by the minorities. Moreover, the Agency even does not recognize the facts of limiting religious freedom in the reviewed cases.

The Agency mandate is labile and vague and it includes the risk of overlapping competences with the other state agencies. Given the recommendatory and indefinite procedural type of the Agency's activities, the issues of restricting the freedom of the religion go beyond the legal space and move to the political space.

The Agency does not have democratic and public forums for communication with the religious organizations due to which legitimacy of this institution to develop policy on religion-related issues is low.

investigation. For this purpose, special strategy and manual need to be prepared for fighting hate motivated crimes and respective staff should be retrained in a prompt and qualitative manner. In this regard detailed and deep statistics is to be maintained for crimes motivated by hatred hate motivated crimes.

- Local governments are to realize problems related with construction of religious buildings and set practical ways for their resolution.